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February 23, 2022

Hon. Mary Kay Vyskocil
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 2230
New York, New York 10007
VyskocilNYSDChambers@nysd.uscourts.gov

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Re: Letter Motion for Order to Resolve a Discovery Dispute
K2M Design v. Schmidt, et al., 22-cv-03069-MKV

Dear Judge Vyskocil:

Please accept this letter as my request for a brief telephone conference with you next week to assist the parties in resolving a discovery dispute. That dispute relates to the sequence of the depositions of Defendant Gene Lim, Filmwest, his company, and my clients, Plaintiff, K2M Design, and its Owner, Scott Maloney.

Mr. Lim and Filmwest are the guarantors of the payment of a promissory note. Payment of that \$1,250,000.00 note is due from these guarantors because the note's maker, Peter K. Schmidt, failed to pay it when that payment was due. Mr. Lim recommended the loan which resulted in the note. Mr. Lim was represented by Philadelphia lawyer Todd Mosser, Esq. He is now represented by Jeffrey Chabrowe, Esq.

Mr. Mosser insisted that Mr. Lim's deposition should proceed by Zoom. We agreed to that demand. We agreed that Mr. Lim's deposition should proceed on February 14, 2023. On February 10, 2023, Mr. Chabrowe filed his notice of appearance in this case. On February 12, 2023, he wrote to your honor, and requested a continuance and adjournment of Mr. Lim's deposition until "February 24, March 3 or thereafter." You granted his motion.

On February 15, 2023, we emailed Mr. Chabrowe a notice of deposition for Mr. Lim. That notice requires Mr. Lim's March 6, 2023, appearance for his Zoom deposition. On February 16, 2023, Mr. Chabrowe noticed Plaintiff K2M's and Scott Maloney, its owner's deposition to proceed on March 6, 2023, in Mr. Chabrowe's N.Y., N.Y. office.

Mr. Chabrowe failed to confer with undersigned counsel for Plaintiff before scheduling that deposition, the location and timing of which is inconvenient for Plaintiff. Mr. Chabrowe also failed to comply with Fed. R. Civ. Pro.'s 30(b)(6) requirement that:

“Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.”

My effort to meet and confer with Mr. Chabrowe by telephone, as required by Local Rule 37.2, to resolve this issue of whether Mr. Lim's first noticed deposition should proceed on March 6, 2023, requires resolution by your Honor. We also request your Honor should Order that Defendant Filmwest's deposition should proceed on March 7, 2023, and that K2M's and Mr. Maloney's deposition should proceed on March 8, 2023. We also request that your Honor should Order that these depositions should proceed by Zoom, as demanded by Mr. Mosser.

Very Respectfully,

/s/ *Stewart D. Roll*

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Certificate Of Service

I certify that a copy of this Letter Motion was sent to Mr. Chabrowe via email to jchabrowe@gmail.com on February 23, 2023.

/s/ *Stewart D. Roll*

Stewart D. Roll (5370374)

The Court is alarmed by the parties' inability to work together to resolve this dispute without seeking judicial intervention. The depositions should proceed in person, with appropriate health and safety precautions. The parties were previously ordered to complete discovery on or before March 6, 2023. [ECF No. 52.] Because both parties apparently anticipate conducting depositions after that date, the Court GRANTS the parties an additional two weeks to conclude discovery. There will be no further extensions. All discovery must be completed on or before March 20, 2023. Failure to complete discovery in that time may result in the preclusion of evidence or claims. SO ORDERED.

Date: 2/24/2023
New York, New York

Mary Kay Vyskocil
Mary Kay Vyskocil
United States District Judge

